

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

CRAIG A. CHANCE)	
Claimant)	
V.)	
)	
TRAMCO, INC.)	
Respondent)	Docket No. 1,063,956
AND)	
)	
TRAVELERS PROPERTY CASUALTY)	
COMPANY OF AMERICA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent), through Vincent Burnett, of Wichita, request review of Administrative Law Judge Gary K. Jones' March 19, 2015 Post-Award Medical Award.¹ Brian Collignon, of Wichita, appeared for claimant.

The record on appeal is the same as that considered by the judge and consists of the March 12, 2015 transcript and exhibits thereto, in addition to all pleadings contained in the administrative file.

ISSUES

Claimant had cervical spine surgery because of a compensable work-related accidental injury. Prior to surgery, claimant was instructed to discontinue blood thinning medication related to his coronary artery disease. Toward the end of surgery, he had major cardiovascular complications, including a thrombus (blood clot), which required extensive hospitalization. The judge concluded claimant needed surgery and had to stop taking blood thinning medication as a result of the work accident, which led to an increased risk of a blood clot, and the prevailing factor for the claimant's injuries and need for treatment was his work accident. The judge ordered respondent to provide a list of two qualified physicians from which claimant may select a treating doctor.

¹ The case was scheduled as a preliminary hearing and the transcript identifies the hearing as a preliminary hearing. However, the parties agreed to treat the hearing as a post-award medical hearing. (P.H. Trans. at 5). Therefore, this case will be decided by the entire Board and is appealable to the appellate courts.

Respondent requests the Order be reversed. Respondent asserts claimant's accident was not the prevailing factor in causing his injuries and need for treatment, instead arguing the prevailing factor was claimant's preexisting cardiovascular condition, including hypertension, hyperlipidemia, coronary artery disease and prior stent placement. Respondent states, the "bottom line is without the pre-existing coronary artery disease none of the complications from surgery occur."² Respondent argues the judge should have found that claimant's blood clot would not have occurred, but for his preexisting coronary artery disease.

Claimant maintains the Order be affirmed because his work injury was the prevailing factor why he needed cervical spine surgery and had to stop taking his medication, which led to his surgical and post-surgical cardiovascular complications.

The only issue is: what is the prevailing factor in claimant's injuries and need for medical treatment?

FINDINGS OF FACT

On January 9, 2012, claimant sustained a neck injury in Texas from running a chain hoist. He had cervical spine discectomy, decompression and an instrumented fusion from Matthew Henry, M.D., on April 20, 2012. The case settled on March 28, 2013, with medical treatment left open.

Independent of his work injury, claimant had angina in August 2013. Daniel Alvarez, D.O., a cardiologist, performed a heart catheterization and placed a stent in the mid-right coronary artery on August 23, 2013. Dr. Alvarez prescribed Effient and aspirin as dual platelet inhibiting medicine. While the record does not clearly explain why claimant took such medication, we assume the purpose was to avoid a blood clot, also known as a thrombus.

On May 5, 2014, Dr. Henry performed a second work-related cervical spine surgery consisting of decompression and extending the fusion.

On May 13, 2014, claimant had onset of left-sided facial numbness. Due to a presumed transient ischemic attack or a cerebrovascular accident, Dr. Alvarez substituted Plavix in place of Effient.

A September 16, 2014 CT scan was read as showing a fracture of a surgically-placed screw in claimant's cervical spine and inadequate bone graft fusion. Dr. Henry recommended additional decompression and fusion. Claimant agreed to the third surgery.

² Resp. Brief at 11.

On December 7, 2014, prior to the last surgery, Dr. Henry advised claimant to stop using Plavix. According to claimant's wife, he stopped taking "blood thinners" that day.³ The surgery was scheduled for December 17, 2014, but was delayed two days because Dr. Henry was ill. Surgery was thus conducted on December 19, 2014.

Unfortunately, near the completion of the surgery and prior to closure, claimant had an inferolateral acute infarction and then had severe cardiac problems in the recovery room while awaiting transfer to Wesley Medical Center (WMC). Claimant had no pulse, which required multiple electrical shocks. Claimant was revived after 35 minutes of CPR. Claimant was then transferred to WMC, where he again "coded" and required 15 minutes of CPR.⁴ He was hospitalized for his heart issues.

At WMC, Assem Z. Farhat, M.D., performed a cardiac catheterization and located a thrombus at claimant's right coronary artery. Dr. Farhat performed a thrombectomy and percutaneous angioplasty. Unfortunately, claimant developed cardiogenic shock and other serious complications. Claimant was dismissed from WMC on January 19, 2015.

Aly Gadalla, M.D., board certified in internal medicine, was retained by claimant to conduct a records review and provide a causation opinion. Dr. Gadalla reviewed records from Kansas Spine & Specialty Hospital, Wesley Rehabilitation Hospital, Kansas Cardiology Consultants and KMC. He did not have the WMC records, but noted such records were well summarized in the Wesley Rehabilitation Hospital records. Dr. Gadalla indicated claimant was in a coma for approximately one month. Dr. Gadalla was aware of claimant's prior history of coronary artery disease, angina, chronic hypertension and placement of a stent. Dr. Gadalla's report stated:

The prevailing factor resulting in the need for the surgery on 12/19/2014 is the work-related accident and the prior cervical procedure that failed.

Certainly, the need for the cervical surgery on 12/19/2014 and the operative stress has placed the patient at great risk for the myocardial infarction and all the subsequent complications he experienced post surgery.

The complications namely the ST elevation and the acute myocardial infarction arising out of the surgery on 12/19/2014 is a prevailing factor causing the postsurgical medical condition and the hospitalization at Wesley Medical Center and Wesley Rehabilitation.

The surgery complication, namely acute myocardial infarction, cardiac arrest, and coma is a natural and probable consequence of the cervical laminectomy surgery.

³ P.H. Trans. at 20.

⁴ *Id.*, Resp. Ex. 2 (WMC records at 7).

It is my opinion that for this work-related injury and the required cervical surgery the patient would not have needed the treatment that he has incurred since the date of 12/19/14.

In other words, it is my opinion that the work-related injury and the required cervical surgery is the basic reason that brought on the necessity of treatment after the surgery on 12/19/14 at Wesley Medical Center and Wesley Rehabilitation Facility.

It is within reasonable medical probability and certainty that the reason for Mr. Chance's post 12/19/14 surgery treatment is significant operative stress on his cardiac state. Therefore, it is under all reasonable medical certainty and probability that prevailing factor of Mr. Chance's post 12/19/14 surgery treatment and hospital stay is an accident at work on 1-9-12.⁵

Chris D. Fevurly, M.D., who is board certified in internal medicine, occupational medicine and as an independent medical examiner, conducted a records review at respondent's attorney's request. Dr. Fevurly reviewed more extensive records than did Dr. Gadalla. Dr. Fevurly issued a March 5, 2015 letter, which stated:

The discontinuation of the dual anti-platelet medicines (i.e., the Plavix and the aspirin) one week prior to the surgery on 12/19/14 is recognized as the prevailing reason for formation of coronary thrombosis at the stent during surgery. (I have included an article from the British Journal of Anesthesia which discusses this opinion). Patients with coronary artery stents undergoing non-cardiac surgery are at increased risk of major adverse CV events perioperatively.

Dr. Fevurly opined the acute coronary thrombosis occurred during the December 19, 2014 surgery in the area of the stent. He noted "[o]ne could argue" the prevailing factor in the development of claimant's acute coronary thrombosis was either claimant's preexisting angina and narrowing of the mid-right coronary artery or the claimant's need to stop dual anti-platelet therapy prior to the last cervical spine surgery.⁶ In any event, Dr. Fevurly observed claimant's coronary artery disease occurred outside of claimant's work and such "preexisting coronary artery disease is the prevailing factor and there is an increased risk of acute coronary thrombosis due to the presence of the stent. The risk for thrombosis is diminished (but not totally eliminated) by use of dual anti-platelet therapy which had to be stopped in order to perform this . . . cervical spine surgery."⁷ Dr. Fevurly also stated it was reasonable to assume claimant's high white blood platelet count was a contributing factor based on it creating a hypercoagulable state.

⁵ *Id.*, Cl. Ex. 2 at 4-5.

⁶ *Id.*, Resp. Ex. 1 at 4-5.

⁷ *Id.*, Resp. Ex. 1 at 5.

The article Dr. Fevurly attached to his report repeatedly stated patients with coronary stents undergoing non-cardiac surgery have heightened risk of adverse cardiovascular events perioperatively. The article further stated the “dominant risk factor for stent thrombosis and major adverse cardiovascular events is the interruption of dual antiplatelet therapy (e.g. aspirin and clopidogrel).”⁸

In the March 19, 2015 Order, the judge stated in part:

Numerous medical records were introduced into evidence and reviewed. The records state that during surgery complications can arise from anesthesia, including heart attack, stroke, paralysis, or brain damage.

Two expert reports were provided. The Claimant's expert, Dr. Aly Gadalla, states, among other conclusions, that the cervical surgery on December 19, 2014, and the operative stress placed the Claimant at great risk for a myocardial infarction and subsequent complications. The reason for the Claimant's post-surgery treatment is significant operative stress on his cardiac state.

The Respondent's expert is Dr. Chris Fevurly. Dr. Fevurly's report states that discontinuation of the Plavix and aspirin prior to surgery is recognized as the prevailing reason for the formation of coronary thrombosis at the stent. Dr. Fevurly attached a journal article to his report that discusses this. Dr. Fevurly goes on to say that it could be argued that either the stent or the discontinuation of the Plavix and aspirin could be the prevailing factor. Dr. Fevurly concludes that the pre-existing coronary artery disease is the prevailing factor.

...

The issue then is, what is the prevailing factor? There are two doctors offering opposing views on the subject. Dr. Gadalla's report does not provide much explanation for his conclusions. Dr. Fevurly's report provides a more in depth analysis. But the Court does not agree with Dr. Fevurly's ultimate conclusion that the pre-existing stent was the prevailing factor for the Claimant's injuries.

There are several reasons for the Court's decision. Dr. Fevurly acknowledges that it could be argued either way that the stent or the withdrawal of Plavix and aspirin could be considered the prevailing factor.

Dr. Fevurly's report states that the Plavix was stopped one week prior to the December 19, 2014, surgery. That is incorrect. According to the testimony presented at the hearing on March 12, 2014, the Plavix and aspirin were stopped nine days prior to the surgery due to the surgery being postponed from December 17 to December 19, 2014.

⁸ *Id.*, Resp. Ex. 1 at 7; see also pp. 9, 16. Plavix is a brand of clopidogrel bisulfate.

The Claimant was placed in the position of needing the surgery and stopping his dual platelet therapy as a result of the work accident. This increased the likelihood that he would suffer a blood clot. The journal article attached to Dr. Fevurly's report states: "The dominant risk factor for stent thrombosis and major cardiovascular events is the interruption of dual platelet therapy (e.g. aspirin and clopidogrel)."

The Court finds that the prevailing factor for the Claimant's injuries and need for treatment is the work accident. The Claimant's request for medical treatment is granted. The Respondent is ordered to provide a list of two qualified physicians from which the Claimant may select a treating doctor.

Thereafter, respondent filed a timely appeal.

PRINCIPLES OF LAW

An employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment.⁹ The burden of proof is on the claimant to establish an award of compensation. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.¹⁰

K.S.A. 2011 Supp. 44-508 provides, in pertinent part:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

...

(f)(2)(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

⁹ K.S.A. 2011 Supp. 44-501b(b).

¹⁰ K.S.A. 2011 Supp. 44-501b(c).

. . .

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2011 Supp. 44-510k(a)(2) states, in part:

The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury

ANALYSIS

The Board agrees with the judge and concludes respondent is responsible for claimant's treatment. Claimant's blood clot occurred because he stopped taking Plavix. Claimant needed cervical spine surgery because of his compensable work-related accident and respondent authorized such surgery. Claimant was told by Dr. Henry to stop using Plavix prior to his December 2014 surgery. Claimant would not have had his cardiovascular events absent the December 2014 surgery and having been told, in advance of surgery by the authorized treating doctor, to stop taking his blood-thinning medication. The prevailing or primary factor in claimant's injuries and current need for treatment was his work accident.

The Board disagrees with respondent's implied argument that Dr. Fevurly issued a more credible opinion than Dr. Gadalla because Dr. Fevurly reviewed more medical records. While it is typically better for a physician to have all or most of a claimant's medical history, the Board sees nothing in the voluminous medical exhibits which undermine or demonstrate error in Dr. Gadalla's opinions.

CONCLUSIONS

WHEREFORE, after having carefully considered the entire record, the Board affirms the March 19, 2015 Post-Award Medical Award.

IT IS SO ORDERED.

Dated this _____ day of May, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Gary K. Jones